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UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

GERRON LINDSEY,

Petitioner.

V.

**STATE OF DELAWARE,
ATTORNEY GENERAL,
SUPERINTENDENT OF THE
DEPARTMENT OF CORRECTIONS
AND THE WARDEN DELAWARE
CORRECTIONAL CENTER,**

Respondents.

Docket No. Civ. Act. No. 05-164-SLR

DECLARATION ON BEHALF OF PETITIONER IN REPLY TO STATE'S OPPOSITION

Michael V. Gilberti hereby declares:

1. I am a partner in the firm of Epstein & Gilberti, LLC and am co-counsel for petitioner Gerron Lindsey. As such, I am familiar with the facts related to this litigation. I make this

declaration in support of Mr. Lindsey's motion to file a reply and reply to the State's opposition to the petition.

2. According to the Petition and supporting documentation: on June 27, 2002, the Superior Court of New Castle County sentenced Mr. Lindsey. *See* Petition, Exhibit A, page 8. His time for direct appeal expired on July 27, 2002.

3. On August 1, 2002, Mr. Lindsey filed his first *pro se* petition for post conviction relief. *See* Petition, Ex. A, p. 8.

4. On August 28, 2002, Judge Alford of the Superior Court of Delaware, New Castle County, denied it without an evidentiary hearing. *See* Petition, Ex. A, p. 9.

5. On September 19, 2002, Mr. Lindsey filed a *pro se* notice of appeal. *See* Petition, Ex. A, p. 9.

6. According to the certified docket, on **January 30, 2003**, the Supreme Court of Delaware filed its mandate, affirming the denial of his motion for post-conviction relief. *See also* Petition, Ex. A, p. 9. On that date, the affirmance became effective, and until that date, Mr. Lindsey could take no further action. The State's brief (at page 4) ignores this fact and sets the date at January 7, 2003.

7. While his appeal was pending, on January 8, 2003, Mr. Lindsey filed a motion for transcripts with the Superior Court. *See* Petition, Ex. A, p. 9.

8. This motion remained pending until April 22, 2003, when the Superior Court finally denied it. *See* Petition, Ex. A, p. 9.

9. On May 14, 2003, Mr. Lindsey filed a *pro se* motion to compel the production of transcripts. *See* Petition, Ex. A, p. 10.

10. On July 18, 2003, the Superior Court finally denied that motion. *See* Petition, Ex. A, p. 10.

11. Also some time before June 18, 2003, Mr. Lindsey had retained counsel, Nancy Jane Perillo, Esquire, to represent him on a motion for post conviction relief. A copy of a letter from Ms. Perillo to Mr. Lindsey is attached to supplemental declaration as Declaration Exhibit J.¹ Apparently, Ms. Perillo was unable to prepare and file this motion.

12. On February 17, 2004, Kevin J. O'Connell, Esquire, advised Mr. Lindsey that, on January 27, 2003, Ms. Perillo had passed away. A copy of this letter is attached to the supplemental declaration as Dcl. Exhibit K.

13. On December 9, 2003, apparently out of frustration with the fact that his counsel had not filed any papers, Mr. Lindsey filed a second *pro se* motion for post conviction relief. *See* Petition, Ex. A, p. 10.

14. On February 6, 2004, the Superior Court denied the motion. *See* Petition, Ex. A, p. 10.

15. On February 20, 2004, he filed a *pro se* notice of appeal. A copy of a notice from the Supreme Court is attached to and made a part of this declaration as Dcl. Exhibit L.

16. On March 3, 2004, he filed a *pro se* motion for transcript, which the court apparently denied on April 5, 2004. *See* Petition, Ex. A, p. 10.

15. On June 24, 2004, the Supreme Court filed the mandate, affirming the denial of post-conviction relief. *See* Petition, Ex. A, p. 11.

¹ To avoid confusion among the exhibits attached to the petition, we will start the designation of Exhibits in this declaration where the petition left off.

16. Mr. Lindsey filed this petition on February 22, 2005.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 21, 2005

/s/_____
MICHAEL V. GILBERTI